

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MONIQUE MATTHEWS, an	)	
Individual; GABRIEL OGHWE,	)	
an Individual; CYNTHIA	)	No. C10-4371 BZ
JOYNER, an Individual,	)	
	)	
Plaintiff(s),	)	<b>ORDER SCHEDULING</b>
	)	<b>JURY TRIAL AND</b>
v.	)	<b>PRETRIAL MATTERS</b>
	)	
MEDICAL HILL REHAB CENTER,	)	
LLC, a Corporation, KINDRED	)	
HEALTHCARE OPERATING, INC.,	)	
a Corporation,	)	
	)	
Defendant(s).	)	
_____	)	

Following the Case Management Conference, **IT IS HEREBY ORDERED** that the Case Management Statement is adopted, except as expressly modified by this Order. **IT IS FURTHER ORDERED** that:

1. DATES

Trial Date: **Monday, 2/13/2012, 8:30 a.m., 20 days**

Pretrial Conference: **Tuesday, 1/24/2012, 4:00 p.m.**

Last Day for Damages Expert Discovery: **12/23/2011**

Last Day for Rebuttal Damages Expert Disclosure: **12/19/2011**

1 Last Day for Damages Expert Disclosure: **12/14/2011**

2 Last Day to Hear Dispositive Motions: **12/7/2011**

3 Last Day for Non-Damages Expert Discovery: **11/28/2011**

4 Last Day for Rebuttal Non-Damages Expert Disclosure: **10/21/2011**

5 Last Day for Non-Damages Expert Disclosure: **10/14/2011**

6 Close of Non-Expert Discovery: **10/7/2011**

7 2. DISCLOSURE AND DISCOVERY

8 The parties are reminded that a failure to voluntarily  
9 disclose information pursuant to Federal Rule of Civil  
10 Procedure 26(a) or to supplement disclosures or discovery  
11 responses pursuant to Rule 26(e) may result in exclusionary  
12 sanctions. Thirty days prior to the close of non-expert  
13 discovery, lead counsel for each party shall serve and file a  
14 certification that all supplementation has been completed.

15 In the event a discovery dispute arises, **lead counsel** for  
16 each party shall meet in person or, if counsel are outside the  
17 Bay Area, by telephone and make a good faith effort to resolve  
18 their dispute. Exchanging letters or telephone messages about  
19 the dispute is insufficient. The Court does not read  
20 subsequent positioning letters; parties shall instead make a  
21 contemporaneous record of their meeting using a tape recorder  
22 or a court reporter.

23 In the event they cannot resolve their dispute, the  
24 parties must participate in a telephone conference with the  
25 Court **before** filing any discovery motions or other papers.  
26 The party seeking discovery shall request a conference in a  
27 letter filed electronically not exceeding two pages (with no  
28 attachments) which briefly explains the nature of the action

1 and the issues in dispute. Other parties shall reply in  
2 similar fashion within two days of receiving the letter  
3 requesting the conference. The Court will contact the parties  
4 to schedule the conference.

5 3. MOTIONS

6 Consult Civil Local Rules 7-1 through 7-5 and this  
7 Court's standing orders regarding motion practice. Motions  
8 for **summary judgment** shall be accompanied by a statement of  
9 the material facts not in dispute supported by citations to  
10 admissible evidence. The parties shall file a joint statement  
11 of undisputed facts where possible. If the parties are unable  
12 to reach complete agreement after meeting and conferring, they  
13 shall file a joint statement of the undisputed facts about  
14 which they do agree. Any party may then file a separate  
15 statement of the additional facts that the party contends are  
16 undisputed. A party who without substantial justification  
17 contends that a fact is in dispute is subject to sanctions.

18 In addition to **lodging** a Chambers copy of all papers, a  
19 copy of all briefs shall be e-mailed in WordPerfect or Word  
20 format to the following address: bzpo@cand.uscourts.gov.

21 4. ADR

22 This matter is referred to the ADR Department to schedule  
23 a mediation to be conducted within 90 days, if possible. The  
24 parties shall promptly notify the Court whether the case is  
25 resolved at mediation.

26 5. PRETRIAL CONFERENCE

27 Not less than thirty days prior to the date of the  
28 pretrial conference, the parties shall meet and take all steps

1 necessary to fulfill the requirements of this Order.

2 Not less than twenty-one days prior to the pretrial  
3 conference, the parties shall: (1) serve and file a joint  
4 pretrial statement, containing the information listed in  
5 **Attachment 1**, and a proposed pretrial order; (2) serve and  
6 file trial briefs, Daubert motions, motions *in limine*, and  
7 statements designating excerpts from discovery that will be  
8 offered at trial (specifying the witness and page and line  
9 references); (3) exchange exhibits, agree on and number a  
10 joint set of exhibits and number separately those exhibits to  
11 which the parties cannot agree; (4) deliver all marked trial  
12 exhibits directly to the courtroom clerk, Ms. Yiu; (5) deliver  
13 one extra set of all marked exhibits directly to Chambers; and  
14 (6) submit all exhibits in three-ring binders no wider than  
15 three inches. Each exhibit shall be marked with an exhibit  
16 label as contained in **Attachment 2**. The exhibits shall also  
17 be separated with correctly marked side tabs so that they are  
18 easy to find.

19 No party shall be permitted to call any witness or offer  
20 any exhibit in its case in chief that is not disclosed at  
21 pretrial, without leave of Court and for good cause.

22 Lead trial counsel for each party shall meet and confer  
23 in an effort to resolve all disputes regarding anticipated  
24 testimony, witnesses and exhibits. All Daubert motions,  
25 motions *in limine*, and objections will be heard at the  
26 pretrial conference. Oppositions to any motions shall be  
27 filed and served not less than **eleven days** prior to the  
28 conference. There shall be no replies. Not less than **eleven**

1 **days** prior to the pretrial conference, the parties shall serve  
2 and file any objections to witnesses or exhibits or to the  
3 qualifications of an expert witness. Oppositions shall be  
4 filed **five days** prior to the conference. There shall be no  
5 replies.

6 Not less than twenty-one days prior to the pretrial  
7 conference the parties shall serve and file requested voir  
8 dire questions, jury instructions, and forms of verdict. The  
9 following jury instructions from the *Manual of Model Civil*  
10 *Jury Instructions for the Ninth Circuit* (2007 ed.) will be  
11 given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19, 2.11,  
12 3.1-3.3. Do not submit a copy of these instructions. Counsel  
13 shall submit a joint set of case specific instructions. Any  
14 instructions on which the parties cannot agree may be  
15 submitted separately. The Ninth Circuit Manual should be used  
16 where possible. Each requested instruction shall be typed in  
17 full on a separate page with citations to the authority upon  
18 which it is based. Proposed jury instructions taken from the  
19 Ninth Circuit Manual need only contain a citation to that  
20 source. Any modifications made to proposed instructions taken  
21 from a manual of model instructions must be clearly indicated.  
22 In addition, all proposed jury instructions should conform to  
23 the format of the Example Jury Instruction attached to this  
24 Order. Not less than eleven days prior to the pretrial  
25 conference, the parties shall serve and file any objections to  
26 separately proposed jury instructions.

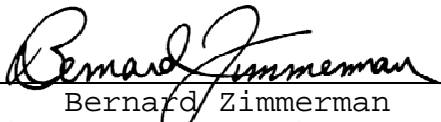
27 Jury instructions that the Court has given in prior cases  
28 may be downloaded from the Northern District website at

1 **http:\\www.cand.uscourts.gov.** (Instructions are located on  
2 the "Judge Information" page for Magistrate Judge Zimmerman).  
3 The Court will generally give the same instructions in cases  
4 involving similar claims unless a party establishes, with  
5 supporting authorities, that the instruction is no longer  
6 correct or that a different instruction should be given. CACI  
7 instructions generally will be given instead of BAJI  
8 instructions.

9 A copy of all pretrial submissions, except for exhibits,  
10 shall be e-mailed in WordPerfect or Word format to the  
11 following address: [bzpo@cand.uscourts.gov](mailto:bzpo@cand.uscourts.gov)

12 At the time of filing the original with the Clerk's  
13 Office, two copies of all documents (but only one copy of the  
14 exhibits) shall be delivered directly to Chambers (Room 15-  
15 6688). Chambers' copies of all pretrial documents shall be  
16 three-hole punched at the side, suitable for insertion into  
17 standard, three-ring binders no wider than three inches.

18 Dated: April 18, 2011

19   
20 Bernard Zimmerman  
United States Magistrate Judge

21 G:\BZALL\BZCASES\MATTHEWS V. MEDICAL HILL\TRIAL SCHEDULING ORDER.wpd  
22  
23  
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25  
26  
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28

**EXAMPLE PROPOSED JURY INSTRUCTION**  
**For Chambers of Magistrate Judge Zimmerman**

A proposed jury instruction should contain the following elements in the following order: (1) the name of the party submitting the instruction; (2) the title of the instruction; (3) the text of the instruction; (4) the authority for the instruction; (5) blank boxes for the Court to note whether it gives the instruction, refuses to give it, or gives it as modified. The following proposed instruction contains these elements.

\_\_\_\_\_ 's Proposed Instruction No. \_\_\_\_\_.  
(Party)

[Title]

[Text]

[Authority]

\_\_\_\_\_ GIVEN \_\_\_\_\_ REFUSED \_\_\_\_\_ GIVEN AS MODIFIED

**ATTACHMENT 1**

The parties shall file a joint pretrial conference statement containing the following information:

**(1) The Action.**

(A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

**(2) The Factual Basis of the Action.**

(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.

(C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

**(3) Trial Preparation.**

A brief description of the efforts the parties have



made to resolve disputes over anticipated testimony, exhibits and witnesses.

(A) Witnesses to be Called. In lieu of FRCP 26(a)(3)(A), a list of all witnesses likely to be called at trial, other than solely for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.

(B) Estimate of Trial Time. An estimate of the number of court days needed for the presentation of each party's case, indicating possible reductions in time through proposed stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.

(C) Use of Discovery Responses. In lieu of FRCP 26(a)(3)(B), cite possible presentation at trial of evidence, other than solely for impeachment or rebuttal, through use of excerpts from depositions, from interrogatory answers, or from responses to requests for admission. Counsel shall state any objections to use of these materials and that counsel has conferred respecting such objections.

(D) Further Discovery or Motions. A statement of all remaining motions, including Daubert motions.

**(4) Trial Alternatives and Options.**

(A) Settlement Discussion. A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.

1 (B) Amendments, Dismissals. A  
2 statement of requested or  
3 proposed amendments to  
pleadings or dismissals of  
parties, claims or defenses.

4 (C) Bifurcation, Separate Trial of  
5 Issues. A statement of whether  
6 bifurcation or a separate  
trial of specific issues is  
feasible and desired.

7 (5) **Miscellaneous.**

8 Any other subjects relevant to the trial of the action,  
9 or material to its just, speedy and inexpensive  
determination.

**ATTACHMENT 2**

**USDC**  
Case No. CV10-4371 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV10-4371 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV10-4371 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV10-4371 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV10-4371 BZ  
**DEFT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV10-4371 BZ  
**DEFT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

**USDC**  
Case No. CV10-4371 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV10-4371 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV10-4371 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV10-1739 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV10-4371 BZ  
**DEFT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV10-4371 BZ  
**DEFT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_